Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 648 /2005

PETITIONER

Bharat Saw Mill,
Registered Office at
Balod, Dist. Durg (C.G.)
Through its Partner
Shri Akhairam Patel,
S/o. Shivgan Bhai Patel,
Aged about 48 years,
R/o. Ward No. 10, Balod,
District Durg (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through its Secretary,
Department of Forest,
Mantralaya, D.K.S.Bhawan,
Raipur (C.G)

2. Divl. Forest Officer,
Durg Division,
Durg(C.G.)

3. Biswas Kumar Yadav,
S/o. Late Shri Durga
Prasad Yadav,

4. Smt. Hemlata Yadav,
W/o. Late Shri Durga
Prasad Yadav,

5. Smt. Damayanti,
W/o. Shri Dhananjay
Kumar Yadav,

Respondents No. 3 to 5
R/o. Jawaharpara, Balod,
District Durg (C.G.)

6. Krishna Kumar,
S/o. Shri Ishwar Singh
Thakur,

7. Shiv Kumar,
S/o. Shri Ishwar Singh
Thakur,

8. Raj Kumar,
S/o. Shri Ishwar Singh
Thakur,

9. Smt. Padma,
D/o. Shri Ishwar Singh
Thakur,

R.R. No. 632/05
Presented by Shri Ramakant Dubey
dated 17-02-05

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Oath Commissioner
Bilaspur Tahsil

(2) (4)

10. Smt. Shail Bai,
D/o. Shri Ishwar Singh
Thakur,

11. Helen Bai,
D/o. Shri Ishwar Singh
Thakur,

12. Smt. Manju,
D/o. Shri Ishwar Singh
Thakur,

13. Smt. Rama,
D/o. Shri Ishwar Singh
Thakur,

14. Smt. Ratna,
D/o. Shri Ishwar Singh
Thakur,

15. Shakuntala alias Bela,
D/o. Shri Ishwar Singh
Thakur,

16. Sanju,
S/o. Shri Ishwar Singh
Thakur,

17. Smt. Urmila,
W/o. Late Shri Ishwar
Singh Thakur,

Respondents No. 6 to 17
R/o. Parras, Ward No. 1,
Balod, Tahsil Balod,
District Durg (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS

XI-HC-22

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cp 64 B/05

आदेश पत्रक

मामला क्रमांक W.P.620/ सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

29-6-2005

Mrs. Fouzia Mirza, counsel for the petitioners.

Mr. Bhaskar Pyasi, Panel Lawyer for the State/respondents No.1 & 2.

Mr. Santosh Yadu, counsel for respondents No.3 to 5.

As the other writ petitions namely, W.P.No.647/2005 (Laxmi Vijay Saw Mill vs. State of Chhattisgarh and others); W.P.No.648/2005 (Bharat Saw Mill vs. State of Chhattisgarh and others); and W.P.No.649/2005 (Ramani Timber Mart vs. State of Chhattisgarh and others) are similar to this writ petition (W.P.No.620/2005 Patel Saw Mill vs. State of Chhattisgarh and others), involving same question of law, therefore, all the four writ petitions are being disposed of by this common order.

For the purpose of convenience, facts of W.P.No.620/2005 are being mentioned herewith.

The case of the petitioner is that partner of the petitioner Saw Mill is in possession of the land bearing Khasra Nos.606/1 & 606/2, rakba 1.100/2.72 acres of land at Patwari Halka No.5/1, Tehsil: Balod, District: Durg, since 1969, when the petitioner Saw Mill was set up and a residential house on the land in question has also been constructed. The said land was belonging to Late Ishwar Singh who authorized the petitioner to establish and operate their Saw Mill, and he used to get consideration in return. Since 1969, the petitioner Saw Mill is in peaceful possession of the aforesaid land and the Saw Mill is in operation since then, and that has been set up after incurring considerable expenses. The revenue record shows that the land in question was in the name of landowner Late Ishwar Singh which is evident from Annexure P-1. It further shows the existence of the petitioner Saw Mill. On the death of Ishwar Singh the land was mutated in the name of legal heirs, which is evident from

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मामला क्रमांक WP.620/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Map Form B-1 Annexure P-2. Initially licence for setting up and running of Saw Mill was granted in the year 1969 and thereafter, continuously the licence is being renewed. Copies of licence is Annexure P-3. The petitioner was registered under Section 11 of the Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, and the registration certification is Annexure P-4. The legal heirs of Late Ishwar Singh filed application dated 11-9-2001 (Annexure P-5) before the Chief Municipal Officer, Municipal Council, Balod, to the effect that the tax should be collect from the person who are in possession. Since then, they are paying all the property tax required by the Municipal Council, Balod, and no tax is due against them. Respondents No.3 to 5 all of a sudden applied for mutation of the aforesaid land in their names before the Tehsildar, Balod and the Tehsildar mutated the land in their names without information the petitioner, which was challenged before the Upper Collector, Durg, who dismissed the appeal. Therefore, the petitioner moved the Revenue Board before which the matter is pending for consideration.

For the year 2005, the petitioner has already deposited the fees amount Rs.501/- on 16-11-2004 for renewal of licence. Copy is Annexure P-9. Respondents No.3 to 5 filed an application before respondent No.2 requesting therein not to renew the licence of the petitioner Saw Mill. Thereafter, respondent No.2 passed order dated 24-1-2005 (Annexure P-10) directing the petitioner to transfer the Saw Mill to another place within 15 days. But the question of title of land is still pending before the Revenue Board. Therefore, the petitioner has prayed for quashment of order dated 24-1-2005 Annexure P-10 and for issuance of writ of mandamus directing respondent No.2 to renew the licence of the petitioner.

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मामला क्रमांक W.P.620/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Return has been filed on behalf of respondents No.1 & 2 in which it has not been disputed that the petitioner is registered ~~Contractor~~ under Section 11 of the Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969. It has also been admitted that the petitioner Saw Mill is running under the licence issued by respondent No.2 and that is being renewed from time to time. However, it has been mentioned in para 11 of the return that there is a dispute in respect of the land on which the Saw Mill is existing, therefore, respondent No.2 asked the petitioner to shift the Saw Mill to any other undisputed land and his licence will be renewed. It is not in public interest to renew the licence, so the impugned notice was given in accordance with Rule 5 of the Chhattisgarh Kastha Chiran (Vinlyaman) Adhiniyam, 1984 with a bonafide intention not to allow the Saw Mill to run on any disputed land.

I have heard learned counsel for the parties.

Learned counsel for the petitioners argued that the petitioner Saw Mill was established and operating since 1969 at the disputed place and the petitioner Saw Mill is registered under Section 11 of the Adhiniyam, 1969, and licence is being continuously renewed. The said land was taken by the petitioner from owner of the land Late Ishwar Singh. Therefore, merely raising dispute regarding land by respondents No.3 to 5, respondent No.2 was not entitled to direct the petitioner to shift the Saw Mill from the existing place and also to refuse the renewal of licence. She further argued that even the licence fee for the year 2005 has already been deposited by the petitioner. Learned counsel placed reliance on the judgment of Gauhati High Court in the matter of **M/s. Guru Nanak Saw Mill vs. State of Assam and others** reported in **AIR 1988 Gauhati 28.**

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, learned Panel Lawyer argued that since respondents No.3 to 5 have raised dispute regarding the land where the Saw Mill is existing, that is why respondent No.2 asked the petitioner to shift the Saw Mill.

Learned] counsel for respondents No.3 to 5 argued that respondents No.3 to 5 have become owners of the land in question on the basis of relinquishment deed issued by Late Ishwar Singh on 5-3-1974.

In view of the above facts, the question which arises for determination before this Court is whether on account of the dispute raised by respondents No.3 to 5 in respect of the land in question, respondent No.2 is entitled to direct the petitioner to shift the Saw Mill from the existing place and also to refuse renewal of the licence. It has not been disputed that the petitioner Saw Mill is operating at the land in question since 1969 and the petitioner Saw Mill has been registered under Section 11 of the Adhiniyam, 1969. It is also not disputed that the petitioner Saw Mill licence is being renewed year to year since 1969. The legal heirs of Late Ishwar Singh on being asked by the Municipal Council to pay the tax moved an application Annexure P-5 before the Chief Municipal Officer, Municipal Council, Balod to collect the municipal tax from the persons who are in possession of the land in question. Since then the petitioner is regularly pay the municipal tax.

The claim raised by respondents No.3 to 5 is that they have become owners of the land in question on account of execution of relinquishment deed by Late Ishwar Singh in the year 1974. Therefore, even if that document (relinquishment deed) for the argument sake is said to be executed in favour of respondents No.3 to 5, but, the petitioner is in possession of the land in question much before that and the Saw Mill was already established and was operating before 1974 with the consent and permission of original land lord, and

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the petitioner is in peaceful possession since then. Therefore, merely by raising dispute by respondents No.3 to 5, respondent No.2 is not legally authorized to ask the petitioner to shift the Saw Mill from the existing place and also to refuse renewal of licence on that ground. Respondents No.3 to 5, if they want to avail any legal remedy whichever is available to them under the law, they are at liberty to approach the appropriate forum for appropriate relief as they are entitled under the law. Without following the due process of law respondents No.3 to 5 are not entitled to evict the petitioner in such a manner with the assistance and help of respondent No.2, whose duty under the relevant law is to enforce the provisions of the Chhattisgarh Kashtha Chiran (Viniyaman) Adhiniyam, 1984, and the Chhattisgarh Kashtha Chiran (Viniyaman) Niyam, 1984, and not to involve in the dispute between the parties. For this view I am fortified by the decision of the Gauhati High Court in the matter of **M/s. Guru Nanak (supra)**, in which the Division Bench of the Gauhati High Court in similar facts and circumstances held that "pendency of a civil suit about lease in respect of land on which saw mill is situated could not be a sufficient ground to refuse renewal of license". Facts of that case were that the owner of the Saw Mill took the land on lease from the predecessor-in-interest of respondents No.5 to 11 in 1966 for the purpose of setting up and running a saw mill, and in pursuance to that the Saw Mill was set up and was running. The Divisional Forest Officer, Nowgong Division, Nowgong asked the petitioner to submit document regarding the plot of land whereupon the mill was situated. When the petitioner was not able to produce the documents then he ordered that the petitioner Saw Mill licence would not renewed. The said action was taken by the Divisional Forest Officer at the instance of the petitioner's landlord. On those facts, the Court held that "*the question of subsistence of the lease should*

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

be considered only insofar as it was necessary for the purpose of continuation of possession of the petitioner in respect of the land whereupon the mill was situated. In deciding the dispute between the land and the tenant in respect of the lease the Forest Officials should in no way act in aid of the landlord as such". It is further held that "*the pendency of the civil suit does not ipso facto terminate the lease. Whether the lease was terminated or not would be decided by the Civil Court and unless that is done the officer, who granted the licence on the basis of the lease of the land, cannot reasonably refuse to renew the licence on the ground of mere pendency of the dispute*".

Similarly, in the present case also till the dispute was raised by respondents No.3 to 5 the petitioner was in peaceful possession and the Saw Mill was running without any objection. The Saw Mill was set up with the consent and agreement of original landlord Late Ishwar Singh. The petitioner is regularly paying tax to the municipality and his licence is also being renewed regularly from year to year. Therefore, unless respondents No.3 to 5 obtain orders regarding eviction of the petitioner from a competent Court or authority, respondent No.2 is not entitled to direct the petitioner to shift the Saw Mill from the existing place and he cannot also refuse renewal of licence so long as the Saw Mill is existing there and so long as the petitioner is abide by the conditions of the licence and other legal provisions of the Adhiniyam, 1969, and the Rules made under the Adhiniyam, 1984. The duty of respondent No.2 is to ensure compliance of the Chhattisgarh Kashtha Chiran (Viniyaman) Adhiniyam, 1984, and the Rules made under the Adhiniyam, 1984

The facts of W.P.No.647/2005 are based on similar and this Saw Mill is also existing on the same Khasra on the adjoining land since 1960. Their case is also that they took the land in question from Late Ishwar Singh.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

W.P.No.648/2005 is also based on the same facts and this Saw Mill is also existing since 1964 on the same Khasra. This Saw Mill was also established after taking the land from Late Ishwar Singh.

Facts of W.P.No.649/2005 are also same and this Mill is also existing on the land bearing same Khasra and their case is also that the Mill is working since 1977.

In all the above three cases also respondents No.3 to 5 have objected the possession of the petitioners.

Therefore, in view of the above, the petitions of the petitioners are allowed. The orders directing the petitioners to shift the Saw Mill dated 24-1-2005 are quashed and respondent No.2 is directed to consider renewal of licence of the petitioners on its own merits without taking into account the dispute regarding the land in question between the petitioners and respondents No.3 to 5.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge